S.B.CIVIL MISC. APPEAL NO.1523/2004

S.R. Mehta.
vs.
M/s. Rajesh Motors (Agencies) Pvt. Ltd.

DATE OF JUDGMENT ::: 24.3.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. KN Joshi, for the appellant.
Mr. A Patel, for the respondent.

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At the request of learned counsel for the parties, this appeal is finally disposed of.

Learned counsel for the parties submit that the wall which fell down has been reconstructed.

According to the learned counsel for the appellant, the wall was constructed by the appellant whereas learned counsel for the respondent submits that his wall has not been constructed but so far as construction of one wall is concerned, that has been completed. So far as claim of compensation by the plaintiff is concerned, that can be made subject matter in suit where all factual aspects of the matter relating to actual damages, if suffered by the plaintiff, can be determined according to the claim set up and contested by the defendant.

In this appeal, no relief about compensation can be

granted nor any compensation can be granted in the proceedings under Order 39 Rules 1 & 2 CPC in the facts of this case.

Learned counsel for the appellant submitted that the plaintiff is tenant only and the landlord has no grievance about any damage to his property, therefore, the plaintiff is not entitled to any relief even in the suit. Such pleas are the pleas which can be decided in the suit and not in this appeal.

In view of the above, this appeal is disposed of as the purpose of raising of construction of wall for the time being has been fulfilled.

This disposal of the appeal will not mean granting of any right to defendant/appellant to demolish the wall. The trial court will decide the suit irrespective of any observation made in these proceedings.

(PRAKASH TATIA), J.

S.Phophaliya